

MATTER OF LEE

In Visa Petition Proceedings

A-17523878

*Decided by Board September 30, 1971*

Petitioner's alleged adoption of beneficiary in China in 1943 when latter was 8 years of age has not been established for immigration purposes since there was no written adoption agreement nor was beneficiary brought up as a child of the adopter since infancy (under 7 years of age) in accordance with Article 1079 of the Chinese Civil Code. Further, even if adoption occurred as alleged, beneficiary's subsequent return in 1946 to Indonesia where he lived with his natural mother from 1946 to 1956 raises the possibility of mutual termination of the adoptive relationship under Article 1080 of the Chinese Civil Code, and petitioner has failed to offer sufficient evidence to explain away the doubt raised as to the continuing effect of the "adoption".

ON BEHALF OF PETITIONER: Sanford A. Peyser, Esquire  
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Petitioner, a permanent resident alien, applied for preference status for the beneficiary as her adopted unmarried son under section 203(a) (2) of the Immigration and Nationality Act. The District Director denied the application in an order dated June 19, 1970, and the petitioner appeals from that denial. The appeal will be dismissed.

The beneficiary is an unmarried male, age 38, who was born in China in 1933. His natural father is Lee Ming Sam. Lee Ming Sam married the beneficiary's natural mother, Lam Tjon Ho, in 1928. There were three other children issue of their marriage who were born in 1935, 1940 and 1953.

In 1933, the beneficiary's father, Lee Ming Sam, moved his family to what is now Indonesia. In 1941, Lee Ming Sam, accompanied by the beneficiary who was then eight years old, returned to his native village in China to visit his mother. Shortly thereafter the Japanese invaded the Dutch East Indies and Lee Ming Sam, losing all communication with his wife, Lam Tjon Ho, and